

## Minutes for the Indigent Legal Services Board Meeting

June 2, 2023

11 A.M.

In person at the New York City Bar Association

**Board Members Present:** Chief Judge Rowan Wilson, Judge Carmen Ciparick, Diane Atkins, Lenny Noisette, Judge Sheila DiTullio

**ILS Office presenters:** Patricia Warth, Burton Phillips, Nora Christenson

**Minutes taken by:** Mindy Jeng

Chief Judge Wilson introduced himself to the Board and said he looked forward to working with everyone.

### **I. Approval of Minutes of April 14, 2023 Board Meeting (vote) (attachment)**

Ms. Atkins made a motion to approve the minutes. Judge Ciparick seconded the motion. The April 14, 2023 minutes were unanimously approved.

### **II. Final Enacted State Fiscal Year (SFY) 2023-2024 Budget (attachment) (Burton Phillips)**

ILS Counsel Burton Phillips provided an update about the enacted budget for ILS. The information is all contained in the summary budget document that is an attachment to the agenda. The final enacted budget included a \$16,000 increase in State Operations over the FY 2022-2023 budget. A total of \$7.25 million will support ILS State Operations.

There was a \$102 million increase in Aid to Localities funding compared to the FY 2022-23 budget. Aid to Localities covers five different programs. Consistent with last year's budget, ILS distributions and grants, *Hurrell-Harring* settlement implementation, and the extension of *Hurrell-Harring* statewide continued in their current levels of funding. The final enacted budget allocated \$14.5 million to parent defense in Family Court matters. This is an increase of \$10 million over the FY 2022-23 budget, but less than the \$28 million requested by ILS.

The fifth Aid to Localities budget item was the Assigned Counsel Program rate increase. The final enacted budget amends County Law § 722-b to increase the statutory hourly rate for assigned counsel to \$158/hour for all case types governed by Article 18-B of the County Law. It is retroactive to April 1. It also increases the statutory cap to \$10,000 per case. The courts can exceed the hourly rate or case cap in extraordinary circumstances. The state provided a \$92 million appropriation that will be used to reimburse 50% of eligible expenditures that the counties and New York City will incur because of the increased statutory rate. Mr. Phillips said

that the goal is for ILS to provide timely reimbursement to the counties. Under the terms of the statutory change, the counties must submit claims no later than 12 months after the expenditures are made. ILS is creating a claim form.

Ms. Atkins asked how long the appropriation will last. Mr. Phillips said that it is just for the current fiscal year. Mr. Noisette asked if \$92 million was enough to cover the 50% increase. ILS Director Warth said that an ILS analysis projected that \$92 million will be about half of the amount of the increase, though by its nature, assigned counsel costs ebb and flow. Director Warth said that County Law § 722-e still states that presumptively, the counties and NYC must pay for assigned counsel costs. ILS' position is that the state should pay the full cost of the assigned counsel rate increase.

Judge Ciparick asked if ILS had to negotiate to reach the amount that was allocated. Director Warth said that the Governor's budget had no State contribution to the pay rate increase. The Senate proposed a split in responsibility between the State and the counties, and the Assembly had the State paying for the whole amount of the increase.

Judge DiTullio said that the attorneys will be happy with the pay increase. Director Warth said the development is definitely good news.

Judge Ciparick asked about the impact on the lawsuits relating to the assigned counsel pay rate. Director Warth said that ILS does not know what the impact is, as of yet. The plaintiffs' view in *Hurrell-Harring* is that the increase does not moot out the issues that they are litigating. Director Warth noted that there will be an uneven impact across the state.

Chief Judge Wilson asked about the additional budget resources that ILS had requested for State Operations that was not ultimately approved by the Legislature and Governor. What were those resources intended for? Director Warth said that ILS had intended to use that money for a Human Resources Director, an additional Auditor for the Grants Unit, and a third position to bolster support of appellate representation in Family Court matters.

### **III. SFY 2023-2024 ILS Aid to Localities Budget Allocation (attachment) (Patricia Warth) (vote)**

Director Warth discussed the Aid to Localities budget allocation, the details of which are contained in the attachment. She noted that the Aid to Localities has seven funding categories that funds five programs and she provided a brief overview of each (as set forth in the attachment):

- **Indigent Legal Services Program**
- ***Hurrell-Harring* Settlement Program**
- ***Hurrell-Harring* Statewide Program**
- **Article 18-B – Family Court Representation**

- **Assigned Counsel Rate Increase.**

Ms. Atkins asked who determines whether individuals are eligible for parent representation services? Director Warth noted that judges generally determine financial eligibility for assigned counsel, and that OCA adopted rules that follow ILS-issued standards to guide judges in making eligibility decisions.

A board member asked how counties use the ILS grant money for improved quality representation in Family Court matters. Director Warth said the grantees can use it to reduce the caseload of existing attorneys, build capacity for an interdisciplinary approach to representation, and/or represent parents during the child welfare investigation. Most grant recipients do a combination of these things.

Mr. Noisette asked about the need to do competitive bidding for the grants and whether counties who received grants in the past have an advantage in the bidding process. Director Warth said that more sophisticated providers and counties do submit better proposals. Director Warth noted that she has discussed this with the Chief Judge.

Chief Judge Wilson said that Chief Administrative Judge Zayas wrote to the Judiciary Committee about the need for more Family Court judges and the need for better funding for providers. They are pushing hard to understand the data behind it. They ended up requesting 27 judges because of the limitations of the physical plant, even though the numbers indicate that they could use more. Chief Judge Wilson said there also needs to be State funding for providers to bring them to parity in caseload caps compared to the public defenders in criminal cases.

Director Warth said if the Board supports it, ILS can do a study to obtain the data needed to determine the State funding needed to achieve compliance with ILS caseload standards for parent representation so that like in criminal cases, there is funding for caseload standard compliance. Director Warth said that provider participation in this study would be voluntary, but ILS is optimistic that providers will participate if they know the purpose is to determine the State funding needed to achieve caseload reduction in parent representation matters. The Board agreed that a study should be done. Chief Judge Wilson said ILS needs to have a defensible methodology supported by evidence for deciding what to request in Family Court funding in our next budget proposal.

Judge Ciparick moved to approve the Aid to Localities allocation. Judge DiTullio seconded the motion. The Board unanimously approved the motion.

**IV. Criminal Defense Representation Unit: Integration of the *Hurrell-Harring* Settlement and Statewide Teams (attachment) (Nora Christenson)**

Nora Christenson described how the ILS Office grew over time. In 2015, ILS created the *Hurrell-Harring* settlement team with a chief attorney, 4 attorneys, a paralegal, and a

researcher. In 2017, legislation was enacted extending the settlement initiatives to the entire State. ILS created a second team for statewide settlement implementation. Both teams have been operating on parallel tracks, though the settlement team has been a little farther ahead because the work started two years earlier. But because both teams were essentially doing the same work, ILS had always known that at some point the two teams would need to be reorganized into one unit to accomplish the work as effectively as possible.

Ms. Christenson said starting in 2020, ILS leadership (Director Warth, Counsel Phillips, HH settlement chief Ms. Christenson, statewide chief Matt Alpern, and Research Director Melissa Mackey) started to have conversations about how to reorganize the two teams into one team. While these conversations were happening, the two teams began working on joint projects. An example is the Assigned Counsel Program summits, which shifted to a virtual model during the pandemic, but had an extremely successful in-person summit in March 2023. It was a joint effort from people throughout the office. The full five-year phase in of the funding for the statewide implementation of the settlement was completed in March 2023, and the *Hurrell-Harring* settlement monitoring period is scheduled to conclude in September 2023. By December 2022, ILS leadership finalized a plan for integrating the teams into one team by adopting a regional approach. This regional approach provides an opportunity to learn more about the mandated defense system in each county; it also is an opportunity to identify and implement regional approaches to improved quality representation. Ms. Christenson said that the fully integrated Criminal Defense Representation Unit includes two deputy positions who assist in supervising and supporting the attorneys assigned to different regions. The team consolidation is already underway. The attorneys are digging in and learning their regions.

Ms. Christenson said they are moving into a new phase with statewide implementation. This internal organization will help the unified team to better organize information, identify quality improvement implementation issues, and implement strategies to address these issues. The team is still working collaboratively with the research unit.

Director Warth said this is the beginning of better integration of all ILS office functions – i.e., criminal defense, parent defense, research, and grants. The goal is for all ILS staff to still feel a sense of responsibility for their role in the office, but to also have a deeper understanding of all ILS functions and an enhanced ability to work collaboratively with their colleagues.

#### **V. Other ILS Office Updates (Burton Phillips)**

Mr. Phillips provided a few updates about ILS Office staff. Two new ILS employees came on board, an Assistant Manager of Information Services and a new Grants Administrator. The new Assistant Manager of Information Services is getting up to speed with Manager of Information Services Peter Avery about the office's IT needs. The new Grants Administrator has a wealth of experience on the provider side of grant funding.

There are also several incoming employees who will work at the statewide appellate support center, including an investigator and an attorney. ILS is still recruiting for open

positions. There are three attorney positions for the Western New York Regional Support Center. There are two open positions on the Criminal Defense Representation team led by Ms. Christenson. ILS also posted for three grants positions.

#### **VI. ILS Board Webpage Pursuant to Executive Law § 203-b (Burton Phillips)**

Mr. Phillips reported that there was a recent change to the Executive Law creating new requirements for state boards relating to their official websites. To the extent that they are applicable, this new information needs to be on the ILS website by September. ILS already has a lot of the information on the ILS website.

Items such as the basis for establishment of the board, contact information and affiliation, the size of the board membership, and minutes and agendas of the board meetings are already on the ILS website. The brief description of the board and whether the members of the board are eligible for reimbursement – that information is currently linked. The Executive Law also requires that the board members' geographic and other relevant qualifications, background, and expertise be posted on the website. Mr. Phillips said that they will explore more clearly which board members fulfill the qualifications and update the website.

Judge Ciparick asked how holdover status may affect the posting of their position on the website. Director Warth said that the statute allows board members with holdover status to continue their service.

#### **VII. Brief Update: *Hurrell-Harring* Settlement Enforcement Action (Patricia Warth)**

Director Warth provided a summary of the status of the *Hurrell-Harring* Settlement Enforcement action. The action was initiated because the assigned counsel rates were not raised since 2004, which has made it very difficult for assigned counsel programs to recruit and retain the number of panel attorneys needed to comply with the settlement's caseload standards and quality initiatives. The settlement's plaintiffs filed a notice of noncompliance in 2022, which triggered a period of negotiations which fell apart by summer 2022. The plaintiffs filed a lawsuit in Albany County Supreme Court, which is still pending. Currently, the court and parties are working out a schedule for discovery. As a result, there has not been any significant action in the last month of so.

ILS recently notified the settlement parties of another compliance issue. Specifically, the Schuyler County Public Defender Office is out of compliance with ILS caseload standards because of the number of increased cases. ILS notified the parties that the Public Defender Office needs an additional attorney.

#### **VIII. Adjourn**

Ms. Atkins made a motion to adjourn. Judge Ciparick seconded the motion. The meeting adjourned at 12:12 pm.